STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND AND WATER

PRELIMINARY DECISION ADL 421485 BLM No. F 028620

Proposed Reconveyance of a Alaska Native Allotment in The Unorganized Borough

PUBLIC COMMENT PERIOD ENDS 4:30 PM, THURSDAY, AUGUST 12, 2021

I. Proposed Action

Preliminary Decision: Lawrence Titus - ADL 421485

Attachment A: Public Notice

Attachment B: U.S. Survey No. 10042
Attachment C: Vicinity & Easement Map

Attachment D: Ownership Map

<u>Proposed Action</u>: The primary proposed action of this Preliminary Decision (PD) of the State of Alaska (State), Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS) is to voluntarily reconvey to the United States of America, U.S. Survey No. 10042, containing 159.96 acres of wrongfully conveyed state land. See *Attachment C:* Vicinity & Easement Map for a depiction of the project area.

The subject parcel is an Alaska Native allotment, Bureau of Land Management (BLM) Serial No. F 028620 claimed by Lawrence Ttitus (deceased). The claim is being settled in accordance with the Stipulated Procedures for Implementation of Order approved by the Court to implement the decision in Ethel Aguilar v. United States of America, 474 F. Supp. 840 (D. Alaska 1979) (herein cited as Aguilar) and Alaska Statute (AS) 38.05.035(b)(9) Powers and Duties of the Director.

<u>Public Notice of Proposal</u>: In accordance with *AS 38.05.945 Notice*, during a period of at least 30 consecutive days, the public will have the opportunity to submit written comment on this proposal.

See **Section VII. Submittal of Public Comments** at the end of this document and *Attachment A:* Public Notice for details on how to submit a comment for consideration. If, after consideration of timely, written comments, DNR DMLW LCS moves forward with the proposal, a Final Finding and Decision (FFD) will be issued.

II. Authority

This reconveyance is being adjudicated pursuant to AS 38.05.020 Authority and Duties of the Commissioner, AS 38.05.035 Power and Duties of the Director, 11 Alaska Administrative Code (AAC) 67.930 Purpose and Procedure and the settlement authority of the Attorney General in accordance with Aguilar. The authority to execute this PD has been delegated to the Section Chief, LCS, DMLW, DNR, pursuant to AS 38.05.035(b)(1) Power and Duties of the Director.

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III. Administrative Record

The DNR case file - ADL 421485 and BLM case file F 028620, constitutes the administrative record for this proposed action. Also incorporated by reference are:

- Yukon Tanana Area Plan for state lands (YTAP, adopted January 3, 2014) and associated land classification files; and
- DNR case files: GS 1057.

IV. Scope of the Proposal

The scope of this proposal, under the statutes described in the preceding **Section II. Authority**, is limited and specific to DNR DMLW's proposal to voluntarily reconvey this land to the United States of America in accordance with the Stipulated Procedures for Implementation of Order approved by the Court to implement the decision in <u>Aguilar</u> and *AS 38.05.035 Power and Duties of the Director*, and whether the reconveyance should be made subject to any stipulations to best serve the interests of the public and the State.

V. Location

Located within DNR's Northern Region, approximately 17 miles northwest of Nenana, the project area is within Sections 27, 28, and 34, Township 1 South, Range 9 West, Fairbanks Meridian, within the Unorganized Borough. The project area consists of approximately 159.96 acres identified for reconveyance by this proposed action. See *Attachment C*: Vicinity & Easement Map for a depiction of the project area.

USGS Map Coverage: Fairbanks D-5

Borough/Municipality: Unorganized Borough

Native Councils and Corporations: The project area is within the boundaries of Doyon Incorporated. Nenana, Minto, and Four Mile Road are within 25 miles of this proposed action and notice will be sent to Tanana Chiefs Conference as the service provider.

VI. Legal Description

The legal description is U.S. Survey No. 10042, Alaska, containing 159.96 acres, more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management, Anchorage, Alaska, on July 24, 1992 and officially filed on August 24, 1992.

VII. Title

The State received title to the land on April 23, 1975 under a Tentative Approval. The State selection file is GS 1057. Title Report 21839 was issued June 7, 2021. The parcel is subject to the reservations, easements, and exceptions contained in the tentative approval.

Acquisition: The State filed selection application GS 1057 (BLM Serial No. 028928) for Township 1 South, Range 9 West, Fairbanks Meridian on January 25, 1962.

Restrictions: The Tentative Approval states that a future patent will contain a reservation for a right-of-way thereon for ditches and canals under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945 and a reservation for the right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the Act of March 12, 1914 (38 Stat. 305).

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VIII. Background

Lawrence Titus (the applicant) began his use and occupancy of the subject lands around the year 1932 according to documentation in BLM case file F 028620. His native allotment application was submitted on November 6, 1961. The State filed selection application GS 1057 for Township 1 South, Range 9 West, Fairbanks Meridian on January 25, 1962, and received title by Tentative Approval on April 23, 1975. The BLM surveyed the 159.96-acre parcel and issued plat U.S. Survey No. 10042 in 1992. On February 4, 2005, the BLM determined Native Allotment application F 028620 valid, and the State received a request for reconveyance on March 25, 2005.

IX. Planning, Classification, and Mineral Orders

 Planning: The subject parcel is located within the YTAP (adopted January 3, 2014), Lower Tanana Region, Unit L-02. The plan designates the subject parcel as Habitat and Public Recreation-Dispersed. These designations convert to classifications of Wildlife Habitat Land and Public Recreation Land under Classification Order CL NC-10-005.

This unit is in the Minto Flats Game Refuge and recommended land use within this management unit/region must align with the purposes outlined in the establishment of the Minto Valley State Game Refuge as put forward in AS 16.20.037 Minto Flats State Game Refuge and the Minto Flats Game Refuge Management Plan, adopted in 1992. While the subject parcel falls within the Minto Flats State Game Refuge, the YTAP explicitly exempts native allotments from the management stipulations of the refuge.

- 2. Land Use Classification: The State classified the subject parcel as Wildlife Habitat Land and Public Recreation Land under Classification Order CL NC-10-005 based on YTAP, adopted January 3, 2014.
- 3. *Mineral Order:* No mineral order exists for the parcel in question.
- 4. Local Planning: This parcel does not exist within any local planning unit.

X. Traditional Use Finding

Before a sale, lease under AS 38.05.070 – 38.05.105 Alaska Land Act, or other disposal of state land in the unorganized borough, the Commissioner shall consider the effect that the sale, lease, or disposal may be expected to have on the density of population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the Commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter (§33 ch. 113 SLA 1981).

Additional information on traditional use is welcome during the public comment period and if this proposal is approved, LCS will address the information received in a subsequent FFD. See the **Section XVI. Submittal of Public Comments** at the end of this document and *Attachment A:* Public Notice for details on how to submit comment.

XI. Access, including Access To and Along Public or Navigable Water

Public Access: This parcel is not adjacent to any navigable or public water ways. This parcel is primarily accessed by foot or ATV in the summer and by dogsled and snow machine in the winter.

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Access To and Along Public or Navigable Waters: In accordance with AS 38.05.127 Access To Navigable or Public Water, DNR will determine if a water body is navigable or public and establish easements or rights-of-way as necessary to ensure unobstructed access to and along the body of water. Regulations dictating the creation of easements or rights-of-way under this statute include 11 AAC 51.035 Determination of Navigable and Public Water, 11 AAC 51.045 Easements To and Along Navigable and Public Water, and 11 AAC 53.450, Buffer Strips, Reserved Areas, and Public Easements.

Easements and Setbacks: The reconveyance will except, reserve, or be subject to the reservations brought forth by the public notice, if any, and the following:

Subject to:

- a) An easement 50 feet in width along each side of the protracted section line in common with Sections 27 and 28, Township 1 South, Range 9 West, Fairbanks Meridian, pursuant to AS 19.10.010 Dedication of Land for Public Highways, 11 AAC 51.025 Section Line Easements, and AS 19.25.010 Use of Rights-of-way for Utilities;
- b) An easement 50 feet in width along each side of the protracted section line in common with Sections 27 and 34, Township 1 South, Range 9 West, Fairbanks Meridian, pursuant to AS 19.10.010 Dedication of Land for Public Highways, 11 AAC 51.025 Section Line Easements, and AS 19.25.010 Use of Rights-of-way for Utilities; and
- c) All other valid and existing rights if any

XII. Reservation of the Mineral Estate

The Division of Oil and Gas (DOG) and the DMLW have determined that it is in the State's best interest to retain the mineral estate. The mineral estate will be retained pursuant to AS 38.05.035(e) Powers and Duties of the Director. The State will not receive an acreage credit for the lands.

XIII. Hazardous Materials and Potential Contaminants

The Department of the Interior, BLM, is expected to inspect the parcel and familiarize itself with the condition and quality of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land here proposed for reconveyance. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

XIV. Survey

The parcel is adequately surveyed for reconveyance to the United States of America.

XV. DMLW and Agency Review

Information and comments received from multiple sections with DMLW prior to and during agency review have been considered and included in the preparation of this preliminary decision. Agency review was conducted from April 27, 2021 to May 28, 2021. Comments pertinent to this proposed

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action received during agency review have been considered and addressed below. Additional timely comments received during the Public Notice period will be considered and addressed in a subsequent Final Finding and Decision (FFD).

<u>DNR DMLW LCS received brief comments of non-objection from the following agencies:</u> DNR Division of Forestry and DNR Division of Oil and Gas.

The following agencies or groups were included in the agency review, but no comment was received:

- Alaska Department of Fish and Game
- State Historical Preservation Office

XVI. Submittal of Public Comments

See Attachment A: Public Notice for specific dates and conditions.

Pursuant to AS 38.05.945 Notice, LCS is issuing public notice inviting comment on this Preliminary Decision.

In accordance with AS 38.05.946(a) Hearings, a municipality or corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing.

LCS will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposal is approved and no significant change is required, the Preliminary Decision, including any deletions, minor changes, and summary of comments and LCS responses will be issued as a subsequent Final Finding and Decision, without further notice.

Only persons from whom DNR DMLW LCS receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision will be made available online at https://landsales.alaska.gov/ or https://landsales.alaska.gov/ or https://landsales.alaska.gov/ or https://landsales.alas

DNR is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact DNR's Public Information Center. For more information refer *Attachment A:* Public Notice.

DEADLINE TO SUBMIT WRITTEN COMMENT IS 4:30 PM, THURSDAY, AUGUST 12, 2021

XVII. Discussion and Alternatives

The following alternatives were considered:

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Alternative 1: Reconvey

Reconvey the land to the United States subject to the reservations, exceptions, and restrictions as stipulated in XI. Access, Including Access To and Along Public or Navigable Water, Easements and Setbacks. This will allow the Native Allottee to obtain title to the land while the State will retain public access on the property as prescribed by statute and thus avoid title recovery litigation by the federal government. Therefore, it is in the best interest of the State to reconvey the parcel as proposed in this decision, and this is the preferred alternative.

Alternative 2: Retain

Retain ownership and withhold reconveyance. DNR currently does not have a persuasive reason to pursue this option. This alternative may lead to title recovery litigation brought by the United States on behalf of the Native Allottee, thus subjecting the State to an uncertain expenditure of resources and an uncertain result of litigation. This alternative is not preferred.

In accordance with the Stipulated Procedures for Implementation of Order in <u>Aguilar</u>, BLM reviewed and determined Mr. Titus' Native Allotment application to be valid on February 4, 2005. Based on documentation within BLM's case file and subsequent comments received from agency review, LCS has found no legal reason for denying this reconveyance subject to public notice and a final decision.

For the reasons outlined above, Alternative 1 is the preferred alternative.

Recommendation follows.

Preliminary Decision ADL 421485 Page 7 of 7

XVIII. Recommendation

This Preliminary Decision for the proposed reconveyance of state lands described throughout this document and its attachments may be within the State's best interest. Reconveyance under the conditions in Alternative #1 is preferable to title recovery litigation. The State's reconveyance will allow the BLM to transfer title of the land to the Native Allottee and will eliminate any further title recovery action. The PD described above, as represented by the preferred alternative, has been reviewed and considered. I find that the recommended action may be in the best interest of the State and that it is hereby approved to proceed to public notice.

This is a Preliminary Decision, and analysis of subsequent public review may result in changes to the preferred alternative of the proposed reconveyance of state lands. If the decision is approved, a Final Finding and Decision may be issued.

Recommended by: Daniel Hovancsek

Native Allotment Coordinator
Land Conveyance Section

Division of Mining, Land and Water Department of Natural Resources

State of Alaska

Approved by: Rachel Longacre

Section Chief

Land Conveyance Section

Division of Mining, Land and Water Department of Natural Resources

State of Alaska

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PUBLIC NOTICE

State of Alaska Department of Natural Resources (DNR) Division of Mining, Land and Water Land Conveyance Section 550 W. 7th Ave., Suite 640 Anchorage, Alaska 99501-3579

Notice is hereby given that the Division of Mining, Land and Water has made a preliminary decision under AS 38.05.035(e) to reconvey the following erroneously conveyed State land to the United States of America for conveyance to the Native allotment applicant noted below pursuant to AS 38.05.035(b)(9) and in accordance with the Stipulated Procedures for Implementation of Order in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979):

Applicant:

Lawrence Titus (deceased)

BLM No.:

F 028620

ADL No.:

421485

Location:

Sections 27, 28, and 34, T. 1 S., R. 9 W., Fairbanks Meridian

Survey:

U.S. Survey No. 10042, containing 159.96 acres, more or less

The public is invited to comment on the proposals to reconvey the land. Copies of the Preliminary Decision are available from the address above. Comments must be in writing and received at the above physical address, faxed to (907) 269-8916, or submitted by email danny.hovancsek@alaska.gov before 4:30 pm, August 12, 2021 in order to ensure consideration and appeal in accordance with 11 AAC 02.010(c). Public comments will be reviewed and considered in the Final Finding and Decision. The final decision will be issued on or about August 19, 2021, or thereafter, and will be sent to any person who commented during the thirty-day comment period. The Final Finding and Decision will provide additional information about the appeal procedures.

The State of Alaska, Department of Natural Resources, complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services. or special modifications to participate in this review may call 269-8411 TTY/TTD. Please provide sufficient notice in order for the Department to accommodate your needs.

The DNR, Division of Mining, Land and Water reserves the right to waive technical defects in this notice and will forgo an additional notice and comment period upon issuance of the Final Finding and Decision.

Date of Publication: July 12, 2021

Found on fron post, 2 1/2 ins. diam., tirmly seek projecting 3 ins. 40ev the ground, with brass cop mike. C3 54442C WC 1967, from which the original accessories Bury a clear DEEP-1 magnet at the base of the stainless steel post. Buty a ctear DEEP-I magnet at the base of the stainless steel post. Remnants of pits NW and SE on line, 3 ft. dist. A tamareck, 4 ins. diam., bears S. 76 I/2º W., 38 lks, dist., mkd. X BT. A cottonwood, 10 ins. diam., bears S. 3 1/2° E., 25 lks. dist., wth scribe marks 54442C BT vible on a portiaty healed blaze. (Record, S. 22 1/2° W.) Remnants of pits NW and SE on line, 3 ft. dist A tamerach, 3 ine, diem., bears N. 77 1/4° E., 44 lks, dist, mAd, X BT, with a nail, 3 1/2 ine, long, driven 1/2 lns, into the SE face, 6 ins, dover the ground. A famarach, 3 ins. diam., bears N. 53 3/4° w 22 Thu, dist., mkd. X BT, with a nail, 3 1/2 ins. lang, diren i 1/2 ins. into the N face, 6 ins. above the ground. A spruce, 22 ins. dlam., bears 5. 54 I/4° W., 50 lks. dist., with scribe morks X BT visible on a partially healed blaze. (Record, S. 65° W.) A cottenwood, 15 ins. diam., bears N. 24 1/2° W. 23 iks. dist., scribe morks X BY visible on a partially healed blate. (Record, N. 6° E.) Remnants of pits SE and SW on line, 3 ft. dist Found an iron past, 2 1/2 ins. diam., firmly set, projecting 7 ins. above the ground, with bress cop mkd. 54442C C4 WCMC 1967, from which the original accessories Set a staintess steel post, 2 1/2 ins. diam., 28 ins. long, 12 fee, in the ground, encitted by a cock mound, 3 1/2 ft, diam., 14 ins. high with brase cap mikd, as shown, from which Found on iron post, 2 1/2 ins. diam., firmly best, projecting 8 ins. above the ground, with brase cop mkd. C2 \$4442C 1967, Irom which the original accessories A birch, Il ins. djam., bears S. 60° W., 69 Ns. dist., with scribe marks X 8T visible n a partially healed blaze. A spruce, 14 ins. diam., bears N. 46° E., 47 lis, dist., with scribe marks X BT visible in a partially heated blase. A spruca. 10 ins. diam., bears North, 10 lks. dist., with a healed blaze. Monument is located on lavel fundra among sparse famorach. Monument is located on level tundra among scattered tomarack and black spruce. A spruce, 9 ins. diam., bears N. 75° W., 10 lks. dist., with a healed blaze. A pink DEEP-1 magnet bears S. 15° E., 10 lks. dist., 12 lns. below the ground. A birch, 6 ins. diam., bears S. 8* W., 23 lks. dist., with scribe marks X BT visible in a partially healed blaze. Add marks to cap as shown Add marks to cap as shown (\$10042,02 \$44420 1961 1981 S10042 \$10042 ⓓ 1991 1961 0 0 1991 (iii) (W) U.S. SURVEY No. 4442C 2 @ U.S. SURVEY No. 10042 i. Krisine S. Stefsteid: HEREY CEFTIFY was near the in pursuance of Special instructions dated July 8, 1988. I have assented the survey depicted on this piet in strict conformity with said Special instructions, the Manuel of Instructions for the Survey of the Public Lands of the United Stefses, 1973, and in the specific manner described on this piet. ම ල noibisem eusī

U.S. SURVEY No. 10042, ALASKA

AND
THE RETRACEMENT OF A PORTION OF
U.S. SURVEY No. 4442C

The exterior boundaries of Township i South.
Range 9 West, Fortnohas Meridian, Ancista, were
surveyed by Woyne C. Fields and Frederick W. Ward,
Supervisory Cadastral Surveyors, in 1961 through
1968. This plat contains the entire survey record.

This survey was executed by Kristine S. Statfeldt.
Goodstaff Survey. Speciment 19 through October 4.
1991. In accordance with the speciment of the set of the through of the set of the through of the set of the through of the set of U.S. Survey No. 4442C was surveyed by W. F. Van Valkinburgh, Surveying Technician, in 1967

Field assistants were:
Debost H. Eindsen, Jr., Land Surveyor
Deborsh J. MRAtes, Land Surveyor
Scott P. Peronto, Student Traines (LS)

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The geographic position of corner No. 4, identical with the corner No. 2. U.S. Suvey No. 444C. and designated as U.S. Location Monument No. 4442C, as determined from the record of Township is South, Ronge 9 West, Foirbones Medicion, Aleske, is:

64" 47' 50.84" North Longitude: 149° 20' 04.17" West Latitude:

NAD 27

The mean magnetic dectination was obtained from U.S. Geological Survey quadrongle map FAIRBANKS (U.S.). Aleake, 1950 edition, with minor revisions in 1995.

This survey is situated near the westerly shore of an unnamed take, approximately 8 miles southwesterly of the village of Minto, Alaska. The B.L.M. Location Tag was found. The position of this survey was determined from the description given in the Land Examiner's report.

The term DEEP-I magnet refers to a magnetic marker composed of strantium encased in a color coded plastic container. The units are I inch diameter and 2 1/2 inches long. The land is gently rolling hills, forested by spruce, birch, poplar, aider and willow; with accasional marshy areas.

Acceptance of this survey does not purport to frontier and in submerged double or which the Stote of Atsacks is anithmen under the Equal the Stote of Atsacks of Atsa Access to this survey was by helicopter.

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

The survey represented by this plot, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

Jahrapepury Store Director for Cadastral Survey, Atatho For the Director

Litcher & Street

2981 12

Date

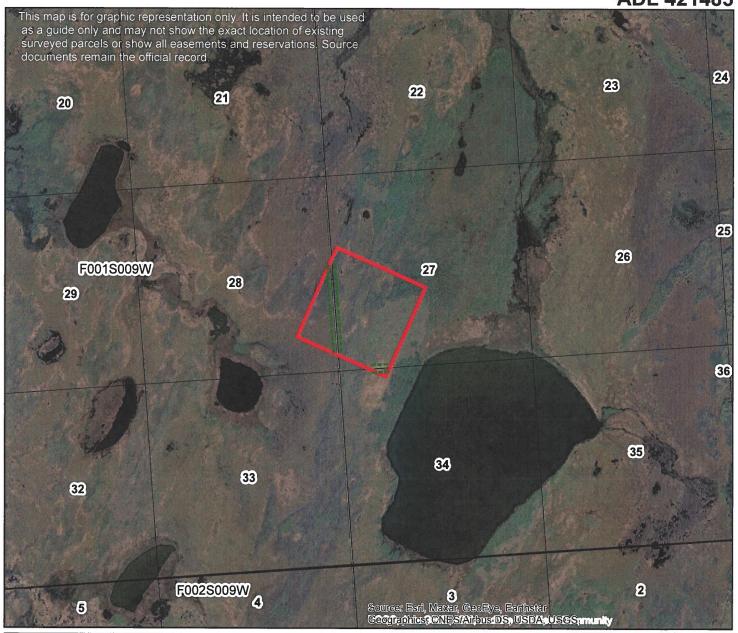
R. 9W Phot: F10-3 7:15

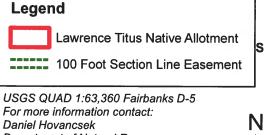
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Attachment C: Vicinity & Easement Map Lawrence Titus ADL 421485





USGS QUAD 1:63,360 Fairbanks D-5
For more information contact:
Daniel Hovancsek
Department of Natural Resources
Division of Mining, Land and Water
Land Conveyance Section
Phone: 907-269-8574
Fax: 907-269-8916

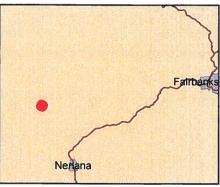
Email: danny.hovancsek@alaska.gov

Sections 27, 28, & 34, Township 1 South, Range 9 West, Fairbanks Meridian

4,000

6,000

2,000



DLH 6/2/2021



Attachment D: Ownership Map

Lawrence Titus

